

PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298



April 4, 2003

Agenda ID # 2054

TO: PARTIES OF RECORD IN APPLICATION 02-02-012

This is the draft decision of Administrative Law Judge (ALJ) DeBerry. It is scheduled to appear on the Commission's agenda on April 17, 2003. The Commission may act then, or it may postpone action until later.

When the Commission acts on the draft decision, it may adopt all or part of it as written, amend or modify it, or set it aside and prepare its own decision. Only when the Commission acts does the decision become binding on the parties.

Pursuant to Rule 77.7(g), comments on the draft decision must be filed by April 14, 2003, and no reply comments will be accepted.

Parties to the proceeding may file comments on the draft decision as provided in Article 19 of the Commission's "Rules of Practice and Procedure." These rules are accessible on the Commission's website at <http://www.cpuc.ca.gov>. In addition to service by mail, parties should send comments in electronic form to those appearances and the state service list that provided an electronic mail address to the Commission, including ALJ DeBerry at bmd@cpuc.ca.gov. Finally, comments must be served separately on the Assigned Commissioner, and for that purpose I suggest hand delivery, overnight mail, or other expeditious methods of service.

/s/ ANGELA K. MINKIN
Angela K. Minkin, Chief
Administrative Law Judge

ANG:k47

Attachment

Decision DRAFT DECISION OF ALJ DeBERRY (Mailed 4/4/2003)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of Southwest Gas Corporation for Authority to Increase Rates in San Bernardino, Placer, El Dorado, and Nevada Counties, California.

Application 02-02-012
(Filed February 13, 2002)

**INTERIM OPINION AUTHORIZING
SOUTHWEST GAS CORPORATION TO ESTABLISH
A MEMORANDUM ACCOUNT TO RECORD REVENUE
SHORTFALLS DUE TO DELAY IN THE PROCEEDING**

Summary

By this interim order, Southwest Gas Corporation (Southwest) is authorized to establish a memorandum account (Revenue Recovery Shortfall Memorandum Account (RRSMA)). The RRSMA will record the margin revenue shortfalls¹ due to any delay in the requested rate relief ultimately to be adopted in this proceeding. The effective date of the RRSMA is the effective date of today's decision. By taking such action, we are not prejudging the results of this general rate case (GRC), or the changes in authorized rates, if any. Furthermore, Southwest will bear the burden of demonstrating the reasonableness of any amounts in the RRSMA at the time it seeks to amortize any RRSMA balances.

¹ Marginal revenue shortfall is the difference between current rates and any new rates ultimately authorized by the Commission.

Background

On December 27, 2001, Southwest tendered a Notice of Intent (NOI), and on February 13, 2002, filed the above-captioned application seeking an 8.77% rate increase in residential rates in Northern California and an 8.30% increase in residential rates in Southern California for the year 2003, with other increases to follow in attrition years. In Resolution ALJ 176-3082 the application was categorized as ratesetting.

On March 21, 2002, the Office of Ratepayer Advocates (ORA) filed a timely protest to Southwest's application identifying a major pipe replacement project, various expense estimates, and cost of capital as issues in the proceeding. The assigned Administrative Law Judge (ALJ) held a Prehearing Conference (PHC) on May 1, 2002 to address the scope of issues in the proceeding and a schedule for resolving them. At the PHC, The County of San Bernardino (The County) appeared as an interested party.

On June 5, 2002, the Assigned Commissioner issued a ruling (Scoping Memo) determining that a hearing was necessary, designating the assigned ALJ as the principal hearing officer, and establishing a schedule for the proceeding. The schedule projected issuance of a Commission Decision by December 19, 2002, and adoption of new rates by January 1, 2003.

On July 19, 2002, ORA served its opening testimony, and on August 5, 2002, intervenors served opening testimony. Rebuttal testimony was served on August 14, 2002. The Commission held public participation hearings in Hesperia, Big Bear Lake, and King's Beach in August 2002. Evidentiary hearings were held August 26 through August 30, 2002. Opening briefs and reply briefs were filed on October 4, 2002, and October 18, 2002, respectively.

On January 31, 2003, Southwest filed a motion requesting that the assigned ALJ authorize establishment of the RRSMA (Motion). This decision addresses this motion, which was not subject to hearings. Attached to the Motion is a copy of the proposed tariff sheets, which set forth the accounting procedures to be used if the RRSMA is authorized. As stated in the Motion, Southwest anticipates further delay in finalizing a decision that was contemplated in the Scoping Memo to occur by December 19, 2002, and argues that it should not be permanently harmed by any expected revenue shortfall. Southwest's proposed RRSMA would provide for the recovery of revenue directly related to delays, in the implementation of any revenue increases authorized by the Commission in this proceeding. Southwest attached to its Motion a copy of Resolution W-4351, that adopted a memorandum account for the Del Oro Water Company to track legal fees and other costs related to a complaint. Southwest states that the Commission in Resolution W-4351 ruled that tracking costs associated with a memorandum account is permitted only after the memorandum account is established.

On February 18, 2003, ORA filed a response in opposition to Southwest's Motion (Response).² In its Response, ORA contends that the requested relief should be denied, and if relief is granted that it should not be effective before the expiration of the 18-month period for issuance of a final decision under Senate Bill (SB) 960 Section 1 (Ch. 96-0856), or August 13, 2003. ORA asserts that the Scoping Memo stated a final decision would be adopted by August 2003, or 18

² On February 18, 2003, The County filed a joinder in support of ORA's Response.

months after the filing of the Application in February 2002. ORA did not object to the provisions of Southwest's proposed RRSMA tariff.

On February 24, 2003, Southwest filed a reply to ORA's Response. Southwest asserts that the Scoping Memo references an agreement reached at the PHC between Southwest, ORA and the County to adopt a schedule contemplating new rates by January 1, 2003. Furthermore, Southwest argues that under the provisions of the Commission's Rate Case Plan, a Commission decision in this proceeding would be rendered by December 27, 2002. Alternatively, under the Scoping Memo a decision should be contemplated by December 19, 2002. As pointed out by Southwest, Decision (D.) 89-01-040 indicates that a final decision would be rendered one year after the tendering of the NOI. Southwest also states it would bear the burden of demonstrating reasonableness of the amounts accumulated in the RRSMA at the time it were to seek authorization to amortize the amounts tracked in the RRSMA.

Southwest observes that even with the immediate establishment of the RRSMA it will have experienced a revenue shortfall from January 1, 2003, forward to the date of Commission authorization to establish this account.

On March 13, 2002, Southwest filed an Emergency Supplement to its motion requesting an interim decision granting its motion at the Commission's April 3, 2003 agenda meeting. Southwest argues that the delay in adoption of new rates places it at risk for significant harm, and it should not be held financially responsible for the effects of the delay. Southwest also asserts that the current status of the proceeding constitutes an emergency situation under Rule 81 as result of inaction on its motion, and the inability of the Commission to meet the deadline anticipated in the Rate Case Plan and Scoping Memo.

Discussion

This proceeding is behind the schedule adopted in the Scoping Memo that anticipated a final decision in December 2002, and behind a schedule using the Rate Case Plan as a guide. This delay, a result of administrative changes within the Commission, is not due to any fault of the parties, including Southwest, and the delay should not result in either the utility foregoing revenue necessary for just and reasonable rates or the ratepayers paying less (or more) than reasonable rates. In D.98-12-078, the Commission found no policy justification for allowing ratepayers to gain from the deferral of rate increases, where such gain would be at the expense of the utility and its shareholders, and where such deferral resulted from delays in the processing of GRCs. It also found the converse to be true, i.e., that shareholders should not gain from the deferral of rate decreases, where such gain would be at the expense of ratepayers. It further found that interim relief that leaves ratepayers and shareholders indifferent to the actual date of the Commission's revenue requirement decision is fair from the perspective of both ratepayers and shareholders. (84 CPUC2d 253 (1998).)

Southwest will not unduly benefit from our authorization to establish the RRSMA. Southwest must still bear the burden of demonstrating the reasonableness of any amounts in the RRSMA that it seeks to amortize. Significantly, Southwest has not proposed that the relief it seeks in its motion become effective on January 1, 2003, the contemplated beginning of the test year as stated in the Scoping Memo. Instead, it requests that the effective date of establishing the RRSMA is the date of today's decision. As a result, Southwest will already have lost any revenue shortfall between January 1, 2003, and today's effective decision date.

We observe that the Rate Case Plan adopted in D.89-01-040, as modified from time to time, sets forth the Commission's expectations for the processing of energy utility ratemaking matters. Among other things, it signifies the Commission's intention to avoid, or at least minimize, regulatory lag and the financial consequences that delays in processing complex rate proceedings can have upon utilities and ratepayers. As stated in D.89-01-040³, Southwest is a smaller energy utility whose rate applications are processed on an expedited basis. Assuming adequate Commission staffing, the applications are generally completed within a year from the tendering of the NOI. However, the Rate Case Plan is not an entitlement that guarantees utilities immunity from any adverse effects of procedural delays. If circumstances require, it may be reasonable and appropriate for the Assigned Commissioner and the Presiding Officer to pursue a procedural schedule that departs from strict adherence to the Rate Case Plan.

Our primary consideration in allowing Southwest to establish the RRSMA is to advance our previously stated policy objective of holding both utility shareholders and ratepayers harmless for any required procedural delays in this proceeding.

By issuing this interim decision, we are not prejudging the results of Southwest's GRC or making any change in authorized rates; nor are we implicating the provisions of Pub. Util. Code § 728. Further, this interim decision should not be used as precedent in any future proceeding.

³ 30 CPUC 2d 606 (1989)

Comments on Draft Decision

The draft decision of the ALJ in this matter was mailed to the parties in accordance with § 311(g)(1) of the Pub. Util. Code and Rule 77.7 of the Rules of Practice and Procedure. Pursuant to Rule 77.7(g), the 30-day period for comment on the draft decision was reduced to 10-days due to stipulation by all active parties. Therefore, comments are due on April 14, 2003, and no reply comments will be accepted.

Assignment of Proceeding

Michael R. Peevey is the Assigned Commissioner and Bruce DeBerry⁴ is the assigned principal hearing officer in this proceeding.

Findings of Fact

1. At the PHC, Southwest, ORA, and the County agreed to a schedule for resolving the issues in this proceeding that contemplated a Commission Decision by December 19, 2003.
2. The Scoping Memo in this proceeding contemplated that new rates would be adopted January 1, 2003.
3. A delay in this proceeding has occurred that is not due to any actions by the parties.
4. Southwest's proposed RRSMA accomplishes the company's objective to offset the financial consequences of the difference between the date the Commission adopts its final decision in this proceeding and the date that the decision would have been expected under the Rate Case Plan.

⁴ Bruce DeBerry was assigned as ALJ effective March 7, 2003. Timothy J. Sullivan was the previous assigned ALJ.

5. Southwest's proposed RRSMA is consistent with our objective to leave both ratepayers and shareholders essentially indifferent to the precise date that the final decision is delivered.

Conclusions of Law

1. Southwest should be allowed to establish the RRSMA to track revenue shortfalls.

2. The authorization granted herein does not bind the Commission to grant the requested revenue requirement, or any portion thereof, as such a grant can only be made upon the development of a complete evidentiary record, and full and fair consideration of the record by the Commission.

3. The effective date of establishing the RRSMA shall be the effective date of today's decision.

INTERIM ORDER

IT IS ORDERED that:

1. Southwest Gas Corporation (Southwest) is authorized to establish the Revenue Recovery Shortfall Memorandum Account (RRSMA) to record margin revenue shortfalls directly related to delays in the implementation of new rates to be authorized by the Commission in this proceeding. By taking such action we are not prejudging the requested rate increase in Southwest's application, or the actual changes in authorized rates, if any.

2. The RRSMA shall be consistent with the proposed tariff sheets filed with its Motion for authorization to establish the RRSMA filed January 31, 2003.

3. The authority being granted in Ordering Paragraph 1 shall not be used as precedent in any future proceeding.

4. Southwest shall provide notice to its customers that any change in rates resulting from this application shall become effective with the effective date of today's decision. Notice shall be provided via a bill insert and shall be approved by the Commission's Public Advisor's Office prior to mailing. The bill insert notice shall state:

"Southwest Gas Corporation has pending before the California Public Utilities Commission a request to increase rates. by Decision 03-__-__, the Commission ordered the rates to be adopted by a final decision in that proceeding to become effective on _____, 2003. By taking such action the Commission is not prejudging the results of Southwest's request for a general rate increase or the changes in authorized rates, if any."

5. This application remains open

This order is effective today.

Dated _____, at San Francisco, California.